

**(2019) 11 RAJ CK 0071**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous (Petition) No. 3447 Of 2018

Vinod Kumar And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

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**Date of Decision :** 22-11-2019

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 323, 341

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(x), 14, 20

**Citation :** (2019) 11 RAJ CK 0071

**Hon'ble Judges :** Sandeep Mehta, J

**Bench :** Single Bench

**Advocate :** G.R. Punia, Rajendra Prasad, Farzand Ali, Anita Gehlot, A.R. Beniwal, Vineet Dave

**Final Decision :** Allowed

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## **Judgement**

Heard learned counsel for the parties. Perused the material available on record.

The petitioners herein are aggrieved of the order dated 01.08.2018 passed by the learned Sessions Judge, Churu in Revision No.29/2017 dismissing the

revision of the petitioners and affirming the order dated 28.01.2017 passed by the learned Judicial Magistrate, Rajgarh, District Churu in FR Case

No.84/2015 whereby, the learned Magistrate, took cognizance against the petitioners for the offences under Sections 341, 323 read with Section 34

IPC and Section 3(1)(x) of the SC/ST Act.

Shri Punia, learned Sr. Counsel assisted by Shri Rajendra Prasad, learned counsel representing the petitioners, vehemently and fervently urged that the

order taking cognizance was passed by the learned Magistrate after coming into force of The Scheduled Castes and The Scheduled Tribes

(Prevention of Atrocities) Amendment Act, 2016. He pointed out that by way of this amendment, the jurisdiction to entertain a complaint and to take

cognizance of the offences under the Act has been exclusively conferred upon the Special Court appointed under the provisions of the SC/ST Act and

a Magistrate is no longer seized of the power to entertain a complaint or a charge-sheet involving offences under the SC/ST Act of 1989. He relies

upon the order dated 10/23.11.2017 passed by the Single Bench of the High court of Jharkhand at Ranchi in the case of Dhiraj Kumar vs. State of

Jharkhand (Cr.M.P. No.578/2010) whereby, an identical order of cognizance was quashed, and prays that the impugned order passed by the learned

revisional court as well as the order passed by the learned Magistrate deserve to be quashed and set aside as being without jurisdiction.

Per contra, learned Additional Advocate General Shri Farzand Ali assisted by Ms. Anita Gehlot and the complainant's counsel Shri Vineet Dave,

vehemently and fervently, opposed the submissions advanced by the petitioner's counsel. Nonetheless, they too are not in a position to dispute the

fact that the order of cognizance was passed after the provisions of the SC/ST Act were amended by the amendment dated 26.01.2016 and whereby,

jurisdiction to take cognizance has been exclusively conferred upon a Special Court or an Exclusive Special Court. The amended provision i.e. Section

14 reads as below:

14. Special Court and Exclusive Special Court.

(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by

notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief

Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the

offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a

period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in

attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day

to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the

date of filing of the charge sheet.â??

Section 20 of the SC/ST Act is an overriding provision enunciating that the provisions of this Act shall have an effect notwithstanding anything

inconsistent therewith contained in any other law for the time being in force.

Power to take cognizance is conferred upon a Magistrate by the Code of Criminal Procedure, which is a general law, and as the special law i.e. The

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended by the Act of 2016, provides that a special court or an

exclusive special court to be the court having power to directly take cognizance of the offences under this Act, the provisions of the general law

empowering the Magistrate to take cognizance of these offences would be overridden by the special statute.

This amendment in Section 14 of the SC/ST Act is purely procedural and thus, would be applicable even on pending cases. Otherwise also, since the

order taking cognizance came to be passed after the amended provisions came into force, the procedure subsequent thereto would be governed by the

provisions as they existed on the date of the order. Precisely, this view was taken by the High Court of Jharkhand at Ranchi in the case Dhiraj Kumar

(supra) and there is no reason for this Court to differ therefrom.

In view of the above discussion, I am of the firm opinion that the order passed by the learned Magistrate dated 28.01.2017 taking cognizance of the

offences under Sections 341, 323 read with Section 34 IPC and Section 3(1)(x) of the SC/ST Act against the petitioner was without jurisdiction and

amounts to an abuse of process of law and hence, the same cannot be sustained.

As a result, the misc. petition deserves to be and is hereby allowed. The impugned order dated 01.08.2018 passed by the learned Sessions Judge,

Churu in Revision No.29/2017 and the order dated 28.01.2017 passed by the learned Judicial Magistrate, Rajgarh, District Churu in FR Case

No.84/2015 are hereby quashed and set aside. The learned Magistrate shall return the final report to the investigating officer for being presented in the concerned Special Court. The stay application is disposed of.